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TAGS: PGOV PREL KCRM KFRD KJUS SOCI CH

SUBJECT: POST LAW ENFORCEMENT AGENCIES ASSESS RELATIONS
WITH CHINESE COUNTERPARTS

Classified By: Acting Deputy Chief of Mission William Weinstein. Reason 1.4 (b and d)

¶1. (C) Summary: U.S.-China law enforcement cooperation, while increasingly important to broadening bilateral ties, continues to face considerable challenges. The Chinese have yet to establish a record of reliable and productive law enforcement cooperation. Notwithstanding some limited joint law enforcement successes, Embassy Law Enforcement Working Group (LEWG) members largely agree that the current level of law enforcement cooperation lags behind cooperation in other areas of the bilateral relationship. The next U.S.-China Joint Liaison Group (JLG) meeting provides an opportunity to candidly assess progress in cooperative efforts since the JLG's 1998 inception and to contemplate ways to improve overall law enforcement cooperation. End Summary.

Law Enforcement Cooperation: Important but Stymied

¶2. (C) The United States and China have been working together under the auspices of the JLG since 1998 to improve bilateral law enforcement cooperation. While increasingly important to broadening bilateral ties, joint law enforcement efforts continue to face considerable challenges and the Chinese have not yet proven to be a reliable and productive law enforcement partner, in the view of agency-members of the Embassy's Law Enforcement Working Group (LEWG). (Note: LEWG members include FBI, DEA, TSA, RSO/DS, DHS, ICE, CBP, DRO, DOJ, DOT, Political and Consular Sections). Cooperation with the Chinese varies greatly depending on the category and content of joint law enforcement efforts. Of particular note, China's cooperation under our existing Mutual Legal Assistance Agreement (MLAA), in force since 2001, has been inconsistent at best.

¶3. (C) LEWG members point to a number of reasons why cooperation remains stymied. First, recent years' national events such as the 2008 Olympic Games, the 2008 Sichuan Earthquake, the 2009 Xinjiang riots, and the October 1 60th Anniversary of the PRC's founding have caused Chinese law enforcement counterparts to slow or cease altogether joint cooperative efforts. Second, Chinese working-level counterparts are often reluctant to share information with U.S. law enforcement agencies. It is unclear whether this sensitivity is due to counterparts' uncertainty on how much information they are authorized to impart, wariness of U.S. law enforcement officials getting too close to the workings of Chinese law enforcement bureaucracy, or other reasons. Third, some LEWG members sense an underlying distrust and insecurity among Chinese counterparts that could be related

to the United States' adherence to the rule of law regardless of political or other considerations. One DS member who worked with the Chinese on Olympic Games security observed that law enforcement cooperation significantly improved only after the Chinese were assured that the U.S. law enforcement community did not intend do anything or reveal anything that would cause China public embarrassment.

Case Study in Cooperation: DEA

¶4. (C) The Drug Enforcement Agency's (DEA) experience working with Chinese counterparts illustrates the dichotomy between the prospects for reliable, productive cooperation and the present reality of a stunted law enforcement relationship. DEA Beijing for several years has been working to achieve genuine joint cooperation in counter-narcotics activity with China's Ministry of Public Security (MPS) Bureau of Counter-Narcotics (BCN). To this end, DEA Beijing (in coordination with headquarters) shares with CNB investigative leads and other intelligence from DEA domestic offices, and has repeatedly offered assistance in criminal narcotics investigations of interest to BCN and other counter-narcotic units nationwide. DEA Beijing, in hope of a reciprocal exchange with Chinese counterparts, has continually requested BCN to share counter-narcotics information generated by Chinese investigations with a U.S. nexus or relevant to a U.S. investigation being conducted in the Asia region. The relationship, however, remains heavily one-sided: the BCN typically does not respond to DEA Beijing requests for information on investigative leads; when it does, the response is so slow and information so general as to be

useless. To date, DEA Beijing has not received any intelligence from BCN that was provided on BCN's own initiative.

¶5. (C) DEA Beijing receives from the BCN limited investigative assistance on a case-by-case basis. The Chinese only render assistance if DEA Beijing presents BCN with investigative information on which it is clearly in China's interest to act. This assistance usually is provided for basic interdiction operations such as the seizure of imported illegal drugs through the postal system, or the seizure of a consignment of illegal drugs on a marine vessel or aircraft. Although DEA Beijing provides the leads and intelligence for these cases, BCN does not share with DEA information on the completion of these investigations. Despite this overall lack of cooperation, DEA Beijing continues to request BCN assistance with a wide variety of investigations on money laundering, diversion of precursor chemicals, smuggling operations, and clandestine laboratories. DEA Beijing will continue to share intelligence with Chinese counterparts and request timely, detailed counter-narcotics information and investigative assistance with the ultimate goal of fostering a relationship of genuine joint law enforcement cooperation.

Limited, Though Promising Successes

¶6. (C) There have been limited successes and two particularly promising examples of productive law enforcement cooperation.

The Department of Homeland Security (DHS) has had active discussions with China's Ministry of Justice on clearing up the backlog of prison labor cases, and anticipates a prison visit before the end of 2009. Diplomatic Security (DS) agents in the Consulates point to U.S. provision of International Law Enforcement Academy (ILEA) training to Chinese contacts as helpful in transforming previously apathetic law enforcement investigative assistance into something more constructive. The Chinese often point to the success of the 2008 Bank of China Kaiping Branch investigation, which was carried out jointly with the Federal Bureau of Investigation (FBI), as an example of how the two countries working together can achieve high-level cooperation. The FBI and China's Ministry of Public Security (MPS) have discussed how the two agencies can build upon the

success of this investigation and cooperate in the near future on a mutually important, joint investigation. The bilateral working relationship between DS and MPS on a recent human smuggling cooperative investigation was "unprecedented"; this was the only known human smuggling case in which U.S. law enforcement agents (in this case from DS and ICE) were invited to witness and indirectly participate in interviews of Chinese subjects in Chinese custody. DS cooperation with the local public security bureau (PSB) office on human smuggling cases is also very good. Over the past year, DS has enjoyed daily routine, working-level cooperation with local PSB offices to pursue and prosecute criminals. PSB officials exchanged valuable criminal intelligence with DS almost daily, which led to dozens of arrests in China and limited success at detaining and prosecuting criminals encountered at U.S. ports of Entry. Several human smuggling cases involving document vendors were successfully prosecuted in Beijing over the last year as a result of this cooperation.

The Next JLG: A Diplomatic Opportunity

¶ 17. (C) The next U.S.-China Joint Liaison Group (JLG) meeting provides an opportunity for both sides to assess progress in cooperative efforts since the JLG's inception and to contemplate ways to improve overall law enforcement cooperation. Ministry of Foreign Affairs (MFA) Department of Treaty and Law working-level contacts privately told PolOff on two separate occasions in late August and early September that China would prefer to push back the next JLG meeting until "sometime next year." When asked why, the MFA contacts both indicated China's view that progress thus far on the respective JLG Working Groups was insufficient to warrant a 2009 meeting. We should continue use the JLG to push for improved law enforcement cooperation at all levels.

Letter of Agreement

¶ 18. (C) In a September meeting with the Ambassador, Vice Foreign Minister He Yafei called for more bilateral collaboration on a wide range of topics and stressed that the November visit of President Obama should show substantive results on law enforcement and joint counter-terrorism efforts, among other issues. With interest on both sides to advance bilateral ties, now could be an opportune time to re-visit signing a Letter of Agreement (LoA) that would enable Department of State funding of projects in China designed to combat transnational crime such as production and trafficking of illicit narcotics, financial crimes, and money laundering. The U.S. and China came close to signing an LoA in 2001, but the Chinese ultimately backed out, citing as too sensitive Congressionally-mandated language on human rights.

Issues to Raise at the Next JLG

¶ 19. (C) Post asks that Washington positively consider the following goals for the next JLG meeting (listed by proposing law enforcement agency):

LEGATT: 1) Seek an exchange of information between law enforcement contacts and a general discussion on the proper use of the Mutual Legal Assistance Agreement (MLAA). Currently, Chinese law enforcement agencies are using the MLAA to facilitate the exchange of general law enforcement information, when in fact the MLAA only should be used to obtain documentation or witness testimony to be utilized in a prosecution. The result is inefficient and inadequate exchange of law enforcement information that hinders progress in case execution.

2) Urge better cooperation and information exchange on

Intellectual Property Rights (IPR) investigations, particularly the exchange of evidentiary information and witness interviews for pending investigations.

DEA: 1) Attain Chinese permission to allow all U.S. law enforcement agencies direct contact with local PSBs, as Chinese law enforcement officials posted to the United States are allowed. Push for U.S. law enforcement agencies to also have direct contact with Chinese banking and financial institutions, as well as companies. Current Chinese requirements that all U.S. law enforcement contact with all Chinese entities first go through the MPS International Cooperation Division often result in a roadblock to law enforcement inquiries.

2) Urge MPS to specify and enforce a consistent policy regarding joint undercover operations with U.S. law enforcement agents in China. This policy would need to cover counter-surveillance operations, undercover bank accounts, undercover Internet operations, undercover meetings, and undercover money laundering activities. The Chinese official position is that joint undercover operations are against Chinese law; however, Chinese law enforcement agents conduct undercover operations with U.S. counterparts when it appears to suit Chinese interests. The Chinese have stated that in the future it might be possible to consider joint undercover operations on a case-by-case basis.

3) Urge the Chinese to provide timely responses to requests for information, and timely reporting on information provided to the Chinese by U.S. law enforcement agencies. Stress the importance of reciprocity.

DHS/ICE: 1) Urge the Chinese to proactively work with ICE to devise solutions to the repatriation of Chinese citizens found to be illegally staying in the United States.

2) Urge closer U.S.-China cooperation on the rise in the number and variety of fraudulent documents used by individuals and criminal organizations to illegally enter or exit national borders necessitated by more frequent flights between the U.S. and China and a more open border for legitimate travel.

DS/CBP: Engage the Chinese on the process of returning inadmissible PRC citizens arriving at U.S. ports of entry from third countries. Current law requires an inadmissible

arriving alien to be removed to the country in which the alien boarded the vessel or aircraft traveling directly to the United States. If an alien arrived from a third country, or transited a third country en route from China to the United States, U.S. Customs and Border agents are obliged by law to return the alien to that third country. In such cases, there currently is no way to ensure that the fraudulent travel documents ever make it to Chinese authorities, leaving those fraudulent travel documents in circulation.

HUNTSMAN